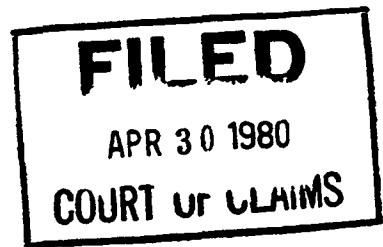


T-1866

UNITED STATES COURT OF CLAIMS

ORIGINAL



CHEYENNE-ARAPAHO TRIBES OF  
INDIANS OF OKLAHOMA, ET AL.

Plaintiff

vs.

UNITED STATES OF AMERICA

Defendant

DOCKET NO. 342-70, ET AL.

DATE: March 27, 1980

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WMS052609

UNITED STATES COURT OF CLAIMS

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: CHEYENNE-ARAPAHO TRIBES OF : Docket No. 342-70  
: INDIANS OF OKLAHOMA, :  
: ET AL, :  
: :  
: CHEYENNE-ARAPAHO TRIBES, : Docket No. 343-70  
: :  
: COEUR D'ALENE TRIBE, : Docket No. 523-71  
: :  
: CROW TRIBE OF INDIANS, : Docket No. 796-71  
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: CROW TRIBE OF INDIANS, : Docket No. 797-71  
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: THE INDIANS OF CALIFORNIA, : Docket No. 797-72  
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: THE INDIANS OF CALIFORNIA, : Docket No. 798-72  
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: BLACKFEET TRIBE OF INDIANS, : Docket No. 309-74  
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: BLACKFEET TRIBE, : Docket No. 310-74  
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: Plaintiffs, :  
: :  
: v. :  
: :  
: UNITED STATES OF AMERICA, :  
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: Defendant. :  
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717 Madison Place, N.W.  
Washington, D.C.

Thursday, March 27, 1980

Met pursuant to notice, the above-entitled matter came  
on for hearing at 10:05 a.m.

ALDERSON REPORTING COMPANY, INC.

WMS052610

1932

BEFORE:

THE HONORABLE THOMAS J. LYDON  
Trial Judge

APPEARANCES:

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I N D E X

DEFENDANT'S WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Charles C. Spilman	1933	1972	1982		
John W. Vale	1987	2027	2074	2087	
James E. Nissley	2088 2109				2103

DEFENDANT'S EXHIBITS

<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>WITHDRAWN</u>
CR-1	1971		
CR-1A	1971		
JWV-1	2002	2002	
AP-109	2027	2027	
JWV-2		2080	
JEN-1		2111	
R-14		2125	
R-15		2125	
R-16		2125	
R-9		2126	
R-10		2126	
R-11		2126	

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THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

Whereupon,

JOHN W. VALE

was called as a witness by counsel for Defendant and, having been duly sworn, was examined and testified as follows:

THE COURT: Would you please state for the record your name and your address?

THE WITNESS: My name is John W. Vale. I live at 10202 Theresa, N.E., Albuquerque, New Mexico.

THE COURT: Mr. Fraley?

DIRECT EXAMINATION

BY MR. FRALEY:

Q Mr. Vale, what is your tribal affiliation?

A I'm an enrolled member of the Chickasaw tribe.

Q That's an Oklahoma tribe, isn't it?

A That's correct.

Q Would you state your present occupation?

A I'm presently the chief, Branch of Investments, Bureau of Indian Affairs.

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Q And you're the John Vale we've heard about from other witnesses?

A Yes, sir.

Q How long have you been in that capacity?

A I've been chief since January, 1972.

THE COURT: And acting since May, 1971?

THE WITNESS: Yes, sir.

BY MR. FRALEY: (Resuming)

Q Mr. Vale, would you give us your educational background?

A I graduated from high school, from the Chilocoo Indian School in Oklahoma. I attended the Haskell Junior College. At the time I attended it it was a non-accredited commercial college. It's now accredited. I graduated from Phoenix Junior College, associate of arts degree. I attended Arizona State University and the University of New Mexico.

Q What were your major courses?

A My major was in accounting. I have all the core requirements for a degree in accounting.

Q When did you first become affiliated with the United States government in an employment capacity?

A I was first employed by the United States government in

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Phoenix, Arizona, 1951.

Q. What position did you hold there?

A. I was an accounting clerk.

Q. What was your job -- where was your next position?

A. I was accounting clerk for about five months and I went into the United States Air Force until 1955 when I returned to Phoenix and the Phoenix area finance office.

Q. Do you perform a job similar to that we've heard described by Mr. Spilman?

A. In 1967 I became the area finance officer for the Phoenix area.

Q. Was that after the time that the central investment office was established for BIA?

A. Yes, it was.

Q. Did you have anything to do with that in 1967?

A. Yes, I did. I was still in early 1967, I was in credit and financing in the Phoenix area office and I was detailed into Washington to establish the manual accounts for the investment program. I was here five weeks one time, three weeks another time, two weeks another time within a six-month period.

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Q Did you work with Dr. Waldo Waltz?

A Yes, I did, fortunately.

Q Do you now consider that --

THE COURT: Before you go on, I think the record should indicate that Dr. Waldo Waltz is W-a-l-t-z?

MR. FRALEY: Yes, sir.

THE COURT: I thought it was Walsh for a while. I looked in some of the documentation and it's Waltz.

MR. FRALEY: Like the dance, yes, sir.

BY MR. FRALEY: (Resuming)

Q During your period as a Phoenix finance officer, Phoenix area finance officer, did you make any investments?

A Yes, I did. I invested the interest funds that Mr. Spilman -- similar interest funds as Mr. Spilman was talking about this morning.

Q Were you doing a packaging or pooling of those smaller accounts?

A Yes, we did it exactly the way Mr. Spilman did. We pooled small amounts for tribal groups so we could get \$100,000, in excess of \$100,000, and we invested those in local banks in Phoenix.



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Q. So there's no occasion to repeat that process --

A. I don't think so. Mr. Spilman explained it very well.

Q. So it's your testimony that your work followed along the same lines?

A. Yes.

THE COURT: What period of time did you do that?

THE WITNESS: This was from 1967 until December 29, 1969. That would have been October, 1967.

BY MR. FRALEY: (Resuming)

Q. All right, what happened after 1967? I should say you were on that job until 1970. What occurred in 1970?

A. I was transferred to Albuquerque as assistant chief, Branch of Investments.

Q. And at that time you were working for whom?

A. Mr. Charles Hourigan.

Q. And as it's been recently observed, you became the acting chief of that office after Mr. Hourigan was promoted?

A. That's correct. In May of '71 I became acting chief of the Branch of Investments and then Mr. Hourigan was promoted and in January, 1972 I became chief, Branch of Investments.

Q. So all told, how many years would you say you've been

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involved up to the end of the litigation period, in handling tribal trust fund investments of one kind or another?

A. Well, from 1967 until the end of the litigation period.

Q. And you're currently doing that at this time?

A. Yes, sir.

Q. Did you attend a conference of attorneys and witnesses last year in regard to preparation of the defense in this case?

A. Is that the meeting of November of '79?

Q. Yes, I believe it is.

A. Yes, I did.

Q. Did you contribute to the discussion that took place with regard to the time credits or the grace periods that the government is asking for in this case?

A. Yes, I did.

Q. You are aware, are you not, that the first one of those that was involved on the exhibits at least is the so-called 45-day appropriation warrant process?

A. Yes.

Q. Would you in your own words briefly give us the procedure that occurred, and I suppose I should say before December 31, 1971, that was involved in processing either

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investments or disbursements through the Treasury?

A. That's the 7 to 15 day delay that --

Q. I'm not talking about the -- I'm really talking about the appropriation process discussed by Ms. Barbee.

A. Depositing of funds in the Treasury?

Q. Right.

A. Okay.

Q. Before they begin to earn interest.

A. Okay. Pre-1972, funds deposited were not available for expenditure or investment until they went through the appropriation warrant process. Any funds that were deposited during a month were not reported to Treasury until the end of the month. This was by standard form 224.

Then Treasury received the reports. They did what Ms. Barbee testified to, and then an appropriation warrant was returned to BIA and at that time the funds were available for investment or expenditure.

Q. Now you testified under oath with regard to Plaintiff's deposition, I believe it's February 12, 1980, did you not?

A. Yes, I did.

Q. And is it your -- strike that. Whose viewpoint was

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accepted in determining the amount of the grace period that should be obtained for the appropriation warrant process?

A. Well, I had an input in it from the standpoint of telling exactly what happened, as far as the deposit process went.

Q. And in fact, that point established the figure, did it not?

A. Yes.

Q. And that was based on your knowledge of the same part of the testimony that Ms. Barbee gave plus what?

A. Well, plus my knowledge of what actually happened. After I heard Mrs. Barbee's testimony I think we may have been conservative in our estimate of the time frame.

Q. All right. With regard to the --

THE COURT: Before you leave that, may I ask a question? This 45-day period I take it was a figure arrived at as a consensus at this meeting in November?

THE WITNESS: That is correct.

THE COURT: You pooled your experiences and came up with this figure?

THE WITNESS: Yes, we did.

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BY MR. FRALEY: (Resuming)

Q All right, the next one on line, Mr. Vale, was the --  
I believe it was the investment delay, the --

A That's the 7 to 15 days that you're talking about.

Q All right. Would you tell us what occurred with regard  
to that process, and this again is prior to December, 1970.

A Okay, the pre-December, 1970, it was our position that  
it took 15 days for an investment. And the process that we had  
to go through at that time, or pre-1970, was we had to contact  
banks to let them know that money was available. We had to  
accept the bids that were received. We had to close the bids. We  
had to make sure that collateral was pledged to cover the  
deposits, and then we would send a standard form 1166 to the  
regional disbursing office for a check to be issued. And it  
was a problem as far as trying to make a determined date as to  
when the funds being received by the bank that we were to deposit  
the money with.

Q All right. How did you go about determining the highest  
bid?

A Well, from the bids, all the bids we received, we  
would determine who the high bids were, who we received the high

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bids from. In many instances a bank would only bid on a certain amount of funds, and of course if they were the high bidder and they say for instance they only bid on \$3 million, that's all the money we could give them. Then we went to the next highest bid and possibly they would have a maximum amount until finally we came down to the lowest high bid that we could place all the money.

Q Okay, relate that to a \$30 million investment you were trying to make. Normally, how would that have been during the litigation period? Would the local banks bid on that?

A Well, of course it would probably be broken down into various terms, but let's say for instance you had \$30 million for one term. Then the banks would bid on that \$30 million and most usually any one bank, except the very large banks, could not take the full \$30 million because of the collateral requirement.

Q Collateralization requirement?

A Collateralization requirement. And also you know, the small banks didn't have capitalization to take that much money.

Q Now the record shows that you dealt a great deal with

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the Bank of America out in the Bay area.

A. Yes, we did. They're the largest in the world.

Q. How did their bids normally stack up with the local bank bids?

A. Well, most usually they were lower than the other bid that we received.

Q. Did you hear the discussion we had the other day here about so-called prime CD's?

A. Yes, I did.

Q. Were you able to get in on any of those or did you want to?

A. Well, of course, Bank of America, that's the prime CD of all the prime CD's. And if we could have gotten in on those we would have and still gotten a high rate of return, if they'd paid the return.

THE COURT: What was the reach of your contacting banks?

THE WITNESS: We were nationwide.

THE COURT: In New York you'd contact, as well?

THE WITNESS: New York, California, Oklahoma, Kansas, the Midwest, all over the United States.

THE COURT: How would you do this, by teletype?

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THE WITNESS: In the earlier days it was by telephone.

THE COURT: This is pre-1970?

THE WITNESS: Well, I think it was even after that time it was by telephone. In recent times went out a mailgram to banks. The banks that we call were not the only banks that we had contacts with. A lot of the banks in the United States knew about us I guess from word of mouth as to the Bureau of Indian Affairs had millions of dollars that they were investing.

BY MR. FRALEY: (Resuming)

Q If you ran out of local banks you could always pick up the last part of it by the Bank of America, is that correct?

A That is correct. We had a standing bid with the Bank of America which was good until they changed that bid.

Q While we're on this subject, are you familiar with the so-called type 1 adjustment that relates to CD's that Dr. Murray has injected in the case?

A I have my understanding of what the type 1 adjustment is.

Q Can you tell us what it is?

A It's my understanding that in reviewing the investments for a similar time period within a 10-day period, the investments



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were analyzed and any bids that fell more than 10 percent from the top bid, then damages were claimed.

Q In other words, what did he do if he found one that was below 10 percent from the top?

A It's my understanding that damages were claimed for the difference between what the rate actually was and the top rate was.

Q Do you think that was a justifiable adjustment to make?

A I do not.

Q Tell us why.

A I think it was Dr. Murray's premise that the top rate that we received was the market, and anything less than that was below the market. And what my position is is the lowest rate that we received was the market. Any rates in excess of that was a bonus.

Q Okay. Are there any other reasons why you may think his formula or parts of his formula are not realistic?

A Well, he had a limitation I think from \$100,000 to \$300,000 and from \$300,000 to \$1 million and then \$1 million and above. And he was giving the same weight to a \$1 million transaction as he was to a \$30 million transaction.

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Q In other words, making the same adjustment for damages?

A That's correct.

Q He also criticized the government's alleged failure to cancel out commercial bank TCD's when other investment opportunities were greater. In other words, do a switch. Do you recall that part of his testimony?

A Would you restate that, please?

Q I say he also testified that there were times when your office should have switched from an existing commercial bank TCD investment to Treasury's. I believe he was talking about the period some time in 1970 or thereafter.

Let me ask this as a preliminary. Were the TCD's that you acquired and held as investments for the tribes, were they marketable? Was there a market for them?

A Some of them were marketable. Some were not marketable. The CD's from the larger banks were marketable. Some from the smaller banks were certainly not marketable in the secondary market.

Q Why not?

A Well, because of such small -- because the banks were so small and their financial position may not have been the

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greatest.

Q Well, they were collateralized, were they not, 100 percent as to principal and interest?

A Well, they were collateralized to us but they would not have been collateralized if we'd sold them in a secondary market because we had a ruling from the Solicitor's Office that if we sold these in the secondary market, the collateralization would stop at that time. So we could not sell them without recourse.

Q You mean no "with recourse" was allowed?

A That's correct.

(Pause.)

MR. FRALEY: While we're waiting for your copy, Your Honor, I would move Defendant's Exhibit JWV-1 be accepted in evidence. That's the curriculum vitae of Mr. Vale.

THE COURT: Oh, his resume.

MS. BROWN: Yes, his resume and attachments, Your Honor, and there's no objection.

THE COURT: All right. Government Exhibit JWV-1 will be received in evidence without objection.

(Document referred to was

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marked for identification as  
Defendant's Exhibit JWV-1 and  
received in evidence.)

BY MR. FRALEY: (Resuming)

Q Mr. Vale, I furnished you a copy of Defendant's  
Exhibit AP-106, which is in evidence, and I ask you to state  
what that document is.

A AP-106 is funds invested in banks, and the particular  
document is a weekly report that was prepared by the Grants and  
Investments that compared the actual rates that were received  
by the Bureau of Indian Affairs in comparison to large New York  
banks.

Q In other words, I take it the information pertaining  
to the large New York banks is imposed on the document?

A That's correct. That information is taken out of the  
Wall Street Journal.

Q Current market quotes?

A That is correct.

Q From similar-type investments?

A That is correct.

MS. BROWN: Excuse me, Counsel. I've got AP-106 but my

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cocounsel points out that there seems to be another AP-106 and maybe we should get that straight on the record.

MS. TAVOLARIO: No, it's AP-106A.

MS. BROWN: The letter to Taylor?

MS. TAVOLARIO: Yes.

MS. BROWN: Okay, our copy is marked AP-106. It's a compilation of Treasury letters is AP-106. Perhaps we'd better check the Court's copy.

THE COURT: This is AP-106.

MS. BROWN: Well, we had two that were numbered that way, Your Honor, but as long as the Court only has one, that's fine.

THE COURT: Do we have the right one? What page were you reading from?

THE WITNESS: Page 52.

BY MR. FRALEY: (Resuming)

Q I'm looking for my next question.

Referring again to Dr. Murray's rules as applied in this case, are you familiar with what Dr. Murray refers to as a type 2 adjustment?

A. Yes, I am.

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Q What does that involve?

A It's my understanding Dr. Murray took those instances where there were short-term investments of less than 45 days and the interest rates were rising. The short-term investments, there was no damages claimed for those. Where the interest rates were declining, there was a deduction for damages -- I mean there were damages claimed for those investments that were invested for less than 45 days where there were no disbursement transactions for 60 days.

Q Okay, now having made those short-term investments or some of them that are under criticism, will you tell us whether or not there were any reasons why the short-term investments were made?

A Well, one reason is that the tribes requested that these funds be invested for 30 days, based on their cash requirements. They were anticipating that funds would be needed within 30 days. Also, there was investments made for short-term -- short-term, that would be less than 45 days -- where the tribe and BIA was overoptimistic about when the payment on award funds could be made.

And in other instances, where per capita payments were

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to be made and I think Mr. Spilman testified to this this morning, and some cases a tribal official would have tremendous pressure on him to make his per capita payment because in some cases a tribe had waited 50 years to get their payment and even though he knew that the pay-out could not be made in 30 days, he wanted to invest the money for 30 days in order for his constituents to not completely give up hope. And there was always the possibility that it could be paid out in 30 days if they could speed up the enrollment process.

And then also in a number of instances, and this is again on awards, we invested the attorney fees for 30 days .. until such time as the certificate of settlement was issued and the attorneys were paid.

Q You wanted to be sure the attorneys got paid promptly, is that right?

A That's right.

Q In your opinion, Mr. Vale, was this type of type 2 adjustment, was it valid or justified under any circumstances?

A I don't think so but from the standpoint that at the time there was a reason for investing money for 30 days.

Q Which may or may not be of record. Is that true?

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A. Beg your pardon?

Q. Which may or may not be of current record anywhere?

A. That's correct and then also there would be some instances that are not shown on the type 2 damages which there would be short-term investments but accordingly to Dr. Murray's rule the interest rates were rising and we did a good thing by investing for 30 days.

Q. I believe we've covered the 45-day, the -- no, we haven't finished the 7 to 15 days.

A. Yes.

Q. What occurred to cause that 15 days to become 7, up to 7?

A. In January of 1971, January 1, 1971, we started wire transfer, and in that instance we started sending a teletype or TWX to Treasury in Washington and they would wire-transfer the money to the bank. We also had to send a standard form, continue to send a standard form 1166 to the regional disbursing office but it was only for information purposes, and we received a check number from the regional disbursing office and we placed this on the TWX to Treasury of Washington and they honored that document to make the wire-transfer. And as Ms. Barbee testified



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yesterday, the wire-transfer was in effect until about the end of 1974, I believe, when at that time we started using electronic funds transfer through Treasury.

Q Okay, now did you detail the pre-January 1, 1970 procedure as far as the allotment process is concerned? That's the process of getting money out of the Treasury, insofar as it related to particularly investments, getting money out to make an investment.

A We would prepare a request for allotment and send it to the Washington office for them to issue an advice of allotment. And then pre-1972 they would have to send a standard form 1151 to Treasury to have the interest stop accruing, and most of the time these transactions were by telephone to the Washington office because on the investment process, the disbursement was not going out of trust. So there wasn't the requirement on a regular allotment of funds where the money was going to be going out of trust.

Q In other words, it was going to be invested, the procedure was a little bit different than if it was going to be spent?

A That's correct

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Q Now at the time you made your request, I believe you stated that you'd already completed your bidding program with the banks, whoever you were going to invest with?

A That is correct because before we could send a request and call the Washington office, we had to know where the money was going and the effective date.

Q Now how did that happen? Did that take a period of time to do that?

A Well, in the normal process of investments, as I explained earlier, this usually took about a week for that process.

Q Did you make some investments during this pre-June 30, '72 period, make any short-term investments while you were awaiting the determination of the bids?

A To my recollection we did not have that procedure during that time.

Q Did you have it after '72, or after mid-term '72?

A Yes, we did.

Q And what did you do in that instance?

A When a deposit came in, we would invest the money for a short period of time, probably a week, into a Treasury bill, and then at maturity it would be, providing that certificates of

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deposit was the best investment, we would then invest it into a longer term investment in a certificate of deposit.

Q What was the best investment on the average during the 1964-1974 period? How did Treasury bills, for example, rank with commercial bank TCD's?

A The majority of the time the certificate of deposit was earning the highest rate. The only period that I recall that it was not was when the Regulation Q limited the amount that could be paid on a jumbo certificate of deposit.

Q Do you recall when that period came in, that Regulation Q?

A The limit on Regulation Q was taken off in 1972 on jumbo CD's. Today there's still a limitation on the under \$100,000 CD's, but in 1972 there was no limit as to what could be paid on a \$100,000 CD or more.

Q All right, you heard Mr. Spilman's testimony this morning?

A Yes, I did.

Q Do you concur with him in regard to the procedure that was followed in processing for an allotment in connection with a disbursement?

## VALE - DIRECT

A. That was the process that was followed in the Phoenix area when I was there, and like I mentioned earlier, the investment process for allotments was different than from the field.

Q. In the investment process the so-called check came back to the central BIA office, did it not?

A. And the centralized investment?

Q. Yes.

A. No, it went to the bank. The check went directly to the bank.

Q. What was the principal element that reduced that time from 15 to 7 days?

A. Primarily -- well, it was the issuance of the check. The wire transfer transferred the money the same day that we requested, whereas on the check process we had to actually mail the 1166 to the regional disbursement office in Denver and the regional disbursement office in Denver then mailed the check to the bank.

Q. So it was the availability, then, making of availability of TWX service to BIA that enabled you to shorten the time?

A. That's correct. I do need to clarify one point on this wire, this mailing of the check from the regional disbursing

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office. That is the practice that was followed from 1968 when the investment office was transferred to Albuquerque. But I've learned since I've been here that prior to that time the wire transfer was used here in the Washington office.

Q Wire transfer was used in communicating funds to whom?

A To the banks.

Q What was the reason for moving the central office to Albuquerque?

A I had nothing to do with the actual moving, the policy of moving it. It was my understanding that they wanted to take some of the operating offices out of Washington, and especially in relation to the investment process, it could be operated better out of Albuquerque than Washington because of the time zone and also because of being able to be in more direct contact with the tribes.

Q Most of the tribes you were managing were --

A West of the Mississippi, yes.

Q During your time as assistant chief, Branch of Investments, did you innovate any improvements, and we're now in the period of time that you were in that position, 1970 to 1972?

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A. Yes, I did. When I first went to Albuquerque, my main task was to automate the investment system since I'd had experience in working up a manual system for the investment program.

Q. Mr. Hourigan testified that there was a policy of the Bureau, Bureau of Indian Affairs, to attempt to secure the comments of concurrence or consent of the tribes in the investment of their funds. Did that continue after you became chief?

A. Yes, it did. That policy was started in 1966 when the centralized program was started, and it was at that particular time, the thrust in the Bureau of Indian Affairs was to accept the Indian self-determination. And that is my understanding, that that policy was in conjunction with this Indian self-determination and it was the policy at that time that the Bureau did not invest the funds unless the tribe told us to, and that policy was in effect until 1974 when it was changed to a more positive approach, that we would invest the funds unless the tribe told us not to.

Q. Did you advise them each time or did you advise them at any time that that was your policy?

A. Well, that was the policy. It was distributed to all the

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area offices and agencies.

Q How would the tribe know when to make an input or a request after '74, I guess, since the beginning of '74, to get their wishes taken into account?

A Well, the area investment coordinator would contact them to say you have money available and what term would you like for us to invest it?

Q You still had to receive communication then from the area office telling you what funds were available. Is that right?

A That is correct. We knew what funds were available but we didn't know the use of them because that was part of the budget process that the area offices went through in approving the tribe's budget.

Q Were the area's comments regarding budget needs, were they given high consideration or high priority?

A It's my understanding they were. We had no way of -- we got our instructions from the area office as to what term they wanted to invest the money.

Q At the outset of this program, were the Indians favorable to the idea of having a central office invest their

## VALE - DIRECT

money?

A. They were very skeptical about investing the money, especially into bank certificates of deposit. I suppose they were still aware of what happened in the '30's to banks, and they were very skeptical about having their money taken out of Treasury and invested in outside investments.

Q. Dr. Murray was critical for another reason of your investment activities. I believe he suggested that you should have pooled these funds. Now did you have the capability in 1966 to pool these funds?

A. We did not.

Q. When did you, if you did, obtain such a capability?

A. Well, just recently, in fact the first of January, 1980 we acquired an investment system that would allow us to compute interest on a daily basis.

Q. Was such a system available in 1966?

A. It may have been available but we didn't have one.

Q. Did you have any part or role in the modification of the regulations which eliminated the appropriation warrant process?

A. Yes, I did. At that time I was -- the Branch of Investments was under the Division of Financial Management. And



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the date of delivery of the government securities.

Q And she testified and the exhibits show that it did not in certain instances?

A That's my understanding.

Q What is your opinion about that? Is this a windfall situation?

A Well, yes it would be a windfall situation from the standpoint that Treasury would be paying 4 percent interest and also the tribe would be earning interest on the investment of the government security.

Q How would you compute the amount of the overpayment or the windfall?

A You mean as it relates to the case, this case?

Q This case.

A Well, it would be the total amount going from zero to whatever the composite rate was.

Q Well, would you take it off the Treasury interest or take it off the interest being earned on the investment? How did you compute that?

A Well, the tribe was not entitled to the 4 percent interest that they earned in Treasury. Nor would they be entitled

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to the damages claimed between the 4 percent earned in Treasury and the composite rate.

Q Where you here when Mr. Duffy testified yesterday?

A Yes, I was.

Q With reference -- I believe he testified to situations where the tribe had urgent need for funds which were then outstanding in active investments. Did you hear that part?

A Yes, I did.

Q And he indicated that you handle the transactions in that instance. Please tell us what you did.

A Well, we've developed a procedure that would assist the tribes in not losing money when they had to mature a CD prior to maturity. Regulation Q requires that on the early redemption of any CD that there be certain penalties, and at that time the penalty was the loss of interest for 90 days and they would receive the passbook rate for the remaining time.

So if tribe had to cash out their certificate of deposit early they were faced with that loss, and we worked out an arrangement whereby the IIM account would buy up the portion of the CD that was required for the tribe and where the CD of the tribe was -- the return on the CD was adequate, then there

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Would be no loss of interest to the tribe. Where the rate on the CD was not adequate, then we determined what would be an adequate rate and that's what was charged. So then the only loss to the tribe would be the difference between what the rate on the CD was versus what the market rate at that particular time.

Q Why did you do that? Why didn't you just flat out sell it to the IIM account?

A Well, we had to, on the other end we're the trustee for the IIM account and we had to justify the purchase.

Q Some of these large -- well, are there any illustrations of that calculation and that computation and that subject matter in the Defendant's so-called P series?

A Yes, there is.

Q That are in evidence?

A It's my understanding that they are.

(Pause.)

Q Mr. Vale, I asked you a while ago if 1966 or anytime thereafter the central office had the capability of investing by putting all of the tribe's monies in one pool, and you answered that. Now let me ask you the same question with regard to the authority to do that. Did you have the authority to do that in 1966?

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A. At that time we had not requested, made an official request as to whether we had authority or not.

Q. When did you make such a request or when did you get the authority?

A. About two years ago from our solicitor's office, and at that time they said there may be some question but they recommended that we go ahead with the pooling.

Q. Isn't it a fact that they said, well, it's questionable but we'll defend you if you go ahead and do it.

MS. BROWN: Objection.

THE COURT: Sustained.

MR. FRALEY: Off the record?

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

BY MR. FRALEY: (Resuming)

Q. We've discussed some of the improvements that you were able to bring about, Mr. Vale. At the risk of overlooking some, would you think about it and tell me any other improvements that you feel that were made during your period of -- during the time you assumed the job as acting chief?

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A. Well, one of the --

Q. We talked about the automated investment system.

A. Okay. Automated investment system and then --

Q. Wire transfer? What else was there?

A. Wire transfer of funds was implemented from the Albuquerque office, and of course the famous July 1, 1972 date, that was accomplished. And in addition, we started making monthly summarize of trust funds that gave the tribes information on what funds they had in the Treasury and whether it was allotted or unallotted or invested, giving the receipts and disbursements.

In July of 1972 we started the investment program for IMPL funds and that's not to be confused with the IMPL that we have heard here. That actually should be Indian money not proceeds of labor account.

And then in 1974, the investment policy was rewritten. In 1975 --

Q. Rewritten to provide for an arbitrary investment unless a tribe stated otherwise, isn't that true?

A. That is correct.

Q. Let me go back just one second. We were talking a moment ago about making, at the tribe's request, 30-day

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investments. Did BIA have any option other than to accept those types of requests? I'm talking now about central office investments. Did you have to go along with the idea?

A No, we didn't have to.

Q Did you rely on the area finance officer's advice?

A Yes, we did. When I say we I mean the Bureau of Indian Affairs, the investment office was required to go along with that request.

MR. FRALEY: May I have a minute off the record?

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

BY MR. FRALEY: (Resuming)

Q Mr. Vale, you've heard the testimony in this case, I believe, in regard to monies being disbursed or expended out of principal account funds when there were ample or sizable amounts of money in the interest account funds, interest-bearing interest account funds.

Can you supply any explanation of why that might have occurred?

A I can't think of any instance right now.

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Q Well, would there be any, when you've refreshed your memory a bit, if a tribe had an anticipation of the need for money some time in the future, was it easier to get money out of the interest account than it was out of the principal account?

A Are you talking about pre-'72 or post-'72?

Q Well, either one. Tell me how it was both ways.

A Well, pre-'72 the interest was not available until it was appropriated. And say for instance on a maturity of an investment, if the tribe needed the money immediately they would have no option but to use the principal account because that was available immediately whereas the interest was not available until it went through the appropriation warrant process. Post-'72 that was not the case.

Q All right. I believe you testified that -- where did the earnings go -- let's say you made an investment in commercial bank certificates of deposit. At maturity if there was no other investment, where would the principal go and where would the interest go?

A I'm not sure I understand the question.

Q All right, would the principal sum go back to Treasury? Would it be receipted in the Treasury?

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A During the litigation period, if the maturing investment was not reinvested, it would go back to Treasury. If it was reinvested it would be transferred or stay in the same bank or be transferred to another bank.

Q Okay, if it was out in a CD, you could keep it out and roll it over into another investment?

A That's correct.

Q What if your purchase had been in Treasury bills?

A In all cases the money would go back to Treasury at maturity.

Q There was no option in the Treasury --

A There's only one exception that I recall to that where we had say a Treasury note and another issue was being offered to replace that. Then in that case it would not go back to Treasury.

Q All right. In purchasing Treasury bills, did you actually participate in the auctions?

A We did not.

Q What was the level at which you bought your Treasury bills?

A In the secondary market.



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Q Has there been any recent development which allows you to purchase Treasury bills from the Federal Reserve Bank?

A I believe in 1975 the Treasury started a new, what they call a market special that was available to us and we've been using that process since 1975.

Q Will that cover short days like one, two, three, four?

A Yes, it will. We have available -- we can purchase any government security that's on the market.

Q Any Treasury bill or note that's outstanding?

A Bill, bond or note that's outstanding, that's correct.

Q And how do you redeem it? In what fashion and at what amount level?

A Well, it depends on whether or not we let it run to maturity or whether we sell it prior to maturity.

Q If you sell it prior?

A In that case we would get the bid price on that particular day we sold it.

Q At what market, what area?

A It would be the rate established by the Federal Reserve Bank for that day.

Q The bank made the market for that particular special

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issue, the Federal Reserve Bank?

A. Yes.

THE COURT: I don't know whether you had anything to do with the -- whether you think the propriety of not utilizing the interest accounts which draw no interest to make disbursements, rather than the principal account which draws 4 percent interest.

THE WITNESS: Well, the policy that the Bureau has been fairly strict, and I was quite surprised at the one example that they had where the disbursement was made out of the principal rather than the interest, but the policy that's been followed is the interest be used first and then the principal.

THE COURT: The BIA, that's a policy of BIA?

THE WITNESS: That's correct.

Were you asking as to whether or not I thought that Treasury should not pay interest on interest?

THE COURT: No, no. My question was directed at what you put your finger on. You didn't give me your answer whether you thought it was proper or not but I read your answer into the fact that the BIA policy is to use the interest account first.

THE WITNESS: Right.

MR. FRALEY: Off the record, Your Honor?

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THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

MR. FRALEY: That's all the questions I have of this witness, Your Honor.

THE COURT: Do you want five minutes?

MS. BROWN: All right, Your Honor.

THE COURT: We'll break for five minutes.

(A brief recess was taken.)

end

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THE COURT: You've finished with this witness, haven't you, Mr. Fraley?

MR. FRALEY: Yes, Your Honor.

THE COURT: You may cross examine.

MR. FRALEY: Oh, one thing I forgot to do. I don't believe I moved Exhibit AP-109 into evidence. I'd like to do so at this time.

MS. BROWN: No objection, Your Honor.

THE COURT: Defendant's Exhibit AP-109 will be received in evidence without objection.

(The document referred to, heretofore marked for identification as Defendant's Exhibit No. AP-109, was received in evidence.)

You may cross examine now.

CROSS EXAMINATION

BY MS. BROWN:

Q Let's clear up the question of reverse spending first, Mr. Vale. Do you have Defendant's Fund History, Defendant's Exhibit C-1?

A C-1, right.

## VALE-CROSS

Q Now Mr. Vale, let's turn to the Hoopa account, and that's 7236 at page 26.

A Okay, page 26.

Q Now take a look at that page, Mr. Vale and tell me if I'm reading it correctly. On December 7, 1972, when there was a balance of \$4.6 million in principal and more than \$79,000 in the fallow interest account, the government began disbursing principal funds. There are disbursements from December, January, February, March, all at a time when the Hoopa tribe had money in its interest account, is that correct?

A That's what it shows.

Q Would you say that that's an instance where the tribe had an urgent need for funds, so they disbursed the principal funds as kind of a stop-gap measure?

A That was post-1972; that would not be applicable.

Q Your rationale would not be applicable to any reverse spending that took place post-1972, is that correct?

A That's correct.

Q If I understand your testimony correctly, you've been a government employee for about 25 years now?

A Counting my service time, 29 years.

## VALE-CROSS

Q During your employment with the government, Mr. Vale, has it been your practice to follow the rules and regulations which apply to the agency with which you're employed?

A Yes, it has.

Q So, Mr. Vale, when the OMB told you that you could not invest Indian funds; that is, IMPL funds and judgment funds, in agency securities you followed that regulation?

A Yes, we did.

Q Did you think it was a good idea?

A No, I did not.

Q Over the relevant period, however, Mr. Vale, some Indian funds; that is, the IIM funds, have been invested in agency securities, have they not?

A Yes, that is correct.

Q And when you invested those funds which you were allowed to invest in agency securities, why did you do it? Why did you put them in agencies as opposed to CD's?

A Well, primarily because they were longer term. It's very difficult to get a bid from a bank for a certificate of deposit in excess of one year.

Q And for the term that you had those funds available, would

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you say that you got a higher yield with the agencies? Is that one of the reasons that you did it, you got more return?

A That's correct.

Q Mr. Vale, have you had occasion to read or to discuss with counsel the Court's opinion in the liability of this phase of this case rendered in 1973?

A Was it 1973 or 1975?

Q 1975, I'm sorry.

A I was at that hearing in 1975.

Q And have you had a chance to look at the Court's opinion?

A Yes, I have read that.

Q And do you recall that the Court commented upon the OMB restriction with respect to the investment of Indian funds in agency securities?

A Yes, I do.

Q And in your opinion, would it be fair to say that the Court's comment was very critical of that policy?

A It was.

Q Mr. Vale, how about right now, looking at your 1979 fiscal year report, for example. Can you invest Indian trust funds, the judgment funds and the IMPL funds in agency securities today?

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A We cannot.

Q So the restriction remains.

A That's correct. We do have the request to OMB to remove that restriction.

THE COURT: Did you send them a copy of the opinion?

THE WITNESS: No, sir. They're aware of it I think.

BY MS. BROWN (Resuming):

Q Mr. Vale, we spent a lot of time talking about the 1972 changes, and I believe your testimony is that you participated in the process by which those accounting procedure changes were made, is that correct?

A Yes.

Q And did you actively support those changes?

A Very much so.

Q And in your opinion are they a benefit to the Indians?

A Yes, they are.

Q Now, would you please describe the manner in which they are a benefit to the Indians?

A Well, from the standpoint that the funds start drawing interest at the confirmation of the deposit rather than at the time they're covered in the Treasury, and the continue to earn interest



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until the funds are actually -- the check is actually issued versus the prior to July 1, 1972, the 1151 that stopped the interest earnings. In some cases the dated 1151 and the check were the same, but in some cases they weren't.

Also, the most important part was that the funds were immediately available for investment or expenditure, upon deposit.

Q Mr. Vale, based on your knowledge of the BIA and Treasury accounting system and the matters handling Indian funds, are you aware of any rule of law or regulation which would have prevented those 1972 changes from having been made, any time from October 1964?

A I'm not aware of any.

Q Mr. Vale, I think you just said that one of the key features of those changes was that Indian funds were given available status, and we've heard that quite a bit. It sounds like a very technical little change. What did it mean in terms of benefits to the Indians?

A Well, it eliminated the period of time from the time it was deposited until the appropriate warrant was issued.

Q Well, in terms of concrete figures, would this statement which I guess will sounds familiar, strike you as a fair

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characterization of what that change meant? The interest earnings on uninvested funds in the U.S. Treasury for a six-month period ending June 30, 1979, were only \$103,922. This indicates that 99.1% of the available funds were invested during this period. Contrast this with the interest earnings on uninvested funds in the U.S. Treasury for the six-month period ending December 31, 1972, of \$1,026,000.

A I wrote that.

Q Does it give you some indication of what that little technical change meant to the Indians? My very bad mathematics would rough it out at about 1000% improvement in the investment of trust funds.

A That being available wouldn't be the only reason why the figure decreased dramatically. There were other reasons for that; availability wasn't the only reason.

Q Was availability one of the primary reasons?

A It was a part of the reason, yes.

Q Mr. Vale, is it your opinion, having had an opportunity to view both the pre- and post-1972 systems, that the post-1972 system is working? In other words, do you feel that the United States has sacrificed anything in the line of accuracy or

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accountability for Indian trust funds since 1972?

A Have they sacrificed anything?

Q Well, can you still account for all the Indian money?

A Yes, we can.

Q Can you account for them accurately, down to at least the last dollar?

A We would like to think so, yes.

Q If that's the case, Mr. Vale, and there wasn't any law or impediment, was there really in any period relevant to this litigation, a need for all that paperwork that was part of the pre-1972 system, and most of which was eradicated in 1972?

A It's my understanding, and Ms. Barbee testified, that it was Treasury's position that there was legislation required to implement that change in 1972. It was later found that it was not necessary, but during that time they were under the impression that it did require legislation.

Q During what time, Mr. Vale? During all the time --

A Pre-1972.

Q All those years preceding 1972 they were under that impression, and then it turned out that that wasn't right. So I ask you again, was all that paperwork really necessary?

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A In hindsight, it was not.

Q Now, Mr. Vale, is there still -- you talked about your early investment period. Is there still a policy on the part of BIA not to invest tribal trust funds unless there is affirmative tribal approval of the investment? In other words, not to initiate an investment unless you have a tribal resolution saying to do so?

A The policy now, and has been since 1974, is that we invest the funds unless the tribe tells us not to.

Q You may recall that you responded to a written deposition requested by plaintiffs, and you were asked to provide among other things a list of improvements made by the BIA in the investment system, were you not?

A Yes.

Q And under the improvements you list for year 1971, the establishment of a system to provide investment reports to the tribes each month, and further, a monthly summary of trust funds to be -- further, a monthly summary of trust funds. Is that correct?

A Yes.

Q What's the nature of those reports?

A It's a reporting to the tribe of their trust funds. Do you want me to go into detail as to what they cover?

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Q Just tell us what it says about the trust funds.

A Primarily, it tells the receipts for the current fiscal year, expenditures for the current fiscal year; the total trust funds that they have available, and it's broken down into what portion is allotted, which portion is unallotted, which portion is invested; and also, in recent times there's a detail that shows the detailed documentation on the receipts and detailed documentation on the expenditures.

Q That was a system instituted in 1971. Prior to that, was there a regular distribution system of monthly reports to the tribes showing their investments and the availability of trust funds and so forth?

A Not to my knowledge; not a report that was specifically for the tribe.

Q Mr. Vale, under 1974 improvements in your deposition, you listed that investment policy was rewritten in 1974 to provide for investment of trust funds unless the tribe requested in writing that no investment was wanted. Why was that an improvement?

A Well, we took a positive approach, from the standpoint that we did not require the tribe's permission to invest the funds.

Q Why was it an improvement not to have the tribe's

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permission?

A In some instances, tribes do not have a formal organization which maybe didn't meet at all, and in those instances they had no input into the investment of the funds.

Q So when you didn't have to get some expressed approval in those instances, you could go ahead and invest the funds, and you feel that's to the advantage of that type of tribe, at least?

A Yes.

Q Reading further from your deposition you state that the investment policy of the Bureau until May 1974 was not to invest the trust funds unless the tribe gave approval. And this policy was in conjunction with the Indian self-determination policy. Is that correct?

A Yes.

Q Mr. Vale, did the Indian self-determination policy end in 1974?

A No, it did not.

Q In fact, the Indian self-determination Act was passed around 1974, wasn't it?

A I think it was in 1970.

Q So the policy is still in existence today, but the

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interpretation of what it means has changed, is that correct?

A I'm not that familiar with the policy as such.

Q I don't mean the Act, I'm not asking you for a statutory reference, but there was an Indian self-determination policy both before and after this restriction or guideline, if you will, on tribal consent for investment.

A That is correct.

Q Mr. Vale, am I correct in the five or six years since the 1974 policy has gone in, that no tribe has requested that you not invest their funds; in other words, no tribe has taken that negative step and opted out of your investment policy?

A To my knowledge, there has not been.

Q Mr. Vale, I'd like to clear something up. I know that you didn't prepare Defendant's Exhibit CS-4, but I'd like to have you turn to page 3 of 4 under Ute Mountain. If we look at Edit 25509, we have an investment that matured on 5/17/73, is that correct?

A Yes.

Q And it was not reinvested until the next day. Is that correct? The money was not reinvested?

A That's what the records show.

Q Now, Mr. Vale, the plaintiffs maintain that they were

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entitled to \$189 for the one day's delay, and if you look at CS-4 you will see that defendant suggests in its column "Plaintiffs Error" that the plaintiffs are not entitled to the \$189 because the Bureau of Indian Affairs; that is, your office, had already charged the bank not \$189 but \$239 for that one day's delay.

Now, Mr. Vale, does that strike you as correct? Do you think that's --

A That's certainly a possibility, and that happened occasionally.

Q So your office charged the bank because it was one day late on that. Do you think the bank actually paid? Did they do that?

A Absolutely.

THE COURT: Before you leave that, I noticed in the Investment Phase that they credited the account \$239.06 which is the amount of the charge to the bank.

MS. BROWN: Yes, Your Honor, it appears that the bank did pay.

BY MS. BROWN (Resuming):

Q Why would the bank pay?

A Because they had use of the funds for that one day. They



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were late in making their deposit.

Q I see.

THE COURT: Before you leave that, could I just ask a question. Does plaintiff still claim the \$189.91?

MS. BROWN: No, Your Honor, we're satisfied that Mr. Vale charged the bank \$239 for that one day's delay and that the Indians got that \$239.

THE COURT: Mr. Fraley isn't going to take that difference away from you?

(Laughter.)

MS. BROWN: I think you'll find the deduction listed in plaintiff's correction to their damage schedules.

THE COURT: Oh, all right. That's what I was getting at. It is taken into account in your final damage figure.

MS. BROWN: It is, Your Honor. We wanted to find out why the bank would do that. I'm satisfied with Mr. Vale's answer.

BY MS. BROWN (Resuming):

Q Now let's turn to what the government classifies as its grace period offenses.

MR. FRALEY: What books do you need now?

MS. BROWN: We can just talk about those non-compensable

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periods, Mr. Fraley, and we don't need any exhibit at the moment.

MR. FRALEY: Fine, fine. I'm happy to talk about non-compensable damage period.

BY MS. BROWN (Resuming):

Q Now, Mr. Vale, the first offense, if I understand it correctly, is that the government should not be surcharged for failing to invest Indian monies coming into the Treasury for a period of up to 45 days between the date of the actual coming into the Treasury and the date the appropriation warrant was issued. Is that your understanding?

A This is pre-1972.

Q Pre-1972, okay. Let's be sure we have what the 45 days encompasses. If I remember earlier testimony, the period -- I want to see if you don't agree with this understanding, just let me know -- the 45 days does not include any period that it might have taken the United States to collect field receipts from, let's say, a lessee or any other source, is that correct?

A That is correct.

Q It does not include any period that it might have taken the United States to cover the receipts in the Treasury.

A That is correct.

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Q And in your experience, Mr. Vale, about how much times does it take, pre-1972, to cover receipts into the Treasury. Do you know?

A I never did make a survey of that.

Q Now let's go into the appropriateness of that 45-day period. Is the 45-day period the average time that it took from covering to appropriation warrant in the pre-1972 period?

A It was my understanding that it would take up to 45 days.

Q Do you know about what the average period was?

A Possibly 30 days. This is assuming that half the deposits came in the first of the month and half the deposits came in the second part of the month, and the appropriation warrant was issued on the 15th of the following month.

Q Now, when you're testifying on behalf of this 45-day non-compensable period for getting funds into the Treasury, are you testifying, in fact, that in your experience it actually took up to 45 days, pre-1972?

A Well, I think that was the conclusion we came to; that was the absolute minimum that it would take, up to 45 days.

Q Mr. Vale, it's hard to have a minimum that's up to something. Isn't it? Are you testifying that in your experience, this

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is actually what happened, this is the fact; that it took -- all right, if you want to use the term -- up to 45 days between those two periods, covering an appropriation.

A That was my experience, that it actually took up to 45 days.

Q Okay.

THE COURT: Would it be unreasonable to say well, that's 45 -- I think 30 days is more likely. Do you think that would be unreasonable on my part?

THE WITNESS: Well, taking into consideration what actually happened, up to 45 days was supportable, from the standpoint that I don't think there was ever an appropriation warrant issued prior to the 15th of the following month. I've never seen one.

THE COURT: So you think it would be unreasonable for me to just select 30 days.

THE WITNESS: Yes.

BY MS. BROWN (Resuming):

Q Mr. Vale, assuming that the 45 days, for the moment, is the correct period that it actually took, was that the period that was necessary for it to take?

A That wasn't my position on it, whether it was necessary

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or not. My position was and my experience was that's how long it took.

Q All right. Now, another part of the process is the 15-day non-compensable period for disbursements, is it not?

A Yes.

Q Now, how much of the time involved in this non-compensable period for disbursements relates to the transfer of the funds from the -- relates to the period after the funds have been transferred to the expenditure account?

MR. FRALEY: Could I have that question again, please?

MS. BROWN (Resuming):

Q Sure. How much of this 15-day -- and let me ask you this preliminarily. Is this another actual period? This is another period that in your experience it actually look, is that correct? This 15-day period.

A That would be about 15 days.

Q Okay. How much of that 15 days relates to the period after the funds had been transferred to the non-expenditure account?

A I don't think it would be any of those days because the money was not available until the appropriation warrant was issued.

Q Do we need an appropriation to expend funds, Mr. Vale?

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A I thought you were talking about new deposits.

Q No. I'm sorry, I switched. I thought we'd finished that and that one came under the 45-day period. Now let's go on to the disbursements. In the disbursements, you have a 15-day non-compensable period, right?

A Yes.

Q Again, that's based on your actual experience.

A That's correct.

Q Okay. Now, how much, if any, of that 15-day period relates to any process which would have occurred after funds had been transferred by Treasury from the non-expenditure to the expenditure account? In other words, after they had made that transfer for allotment by Treasury.

A I'm not real sure I understand your question.

Q All right. I think you've described the process that you had to go through in order to get the money from the Treasury into either the hands of someone in the tribe or into another investment.

A I understand.

Q All right. Now, among the things involved in that process, as I understood it, someone has to send in a request for allotment. Is that correct?

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A That's correct.

Q Okay, that comes in from the field.

A That's correct.

Q Then when the request for allotment is sent in, the Treasury takes the funds out of the tribal trust fund's non-expenditure account and transfers those funds into the tribe's expenditure account, correct? They are now considered allotted funds.

A That is correct.

Q Is that where your 15-day grace period stops, or does it go on after that?

A When the Standard Form 1151 is issued, the interest would stop.

Q The interest stops. Does your non-compensable grace period stop? What did you include in those 15 days?

A It was my understanding that the 15 days is the time that the area office or the field initiated the request for investment allotment. That was my understanding.

Q It takes the area office 15 days just to initiate the request?

A Well, from the time that the request was issued until the

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check was issued.

Q Okay. From the time the request issued until the check was issued. That's it.

A Yes.

Q And is the check issued on the day that the funds are transferred to the non-expenditure account?

A Not necessarily.

Q But the fund histories that we've looked at stop on the day that the funds are transferred to the non-expenditure account.

A That's correct, the date of the 1151, the interest stops.

Q The plaintiffs' damages, if they're based on the fund histories, stop on the day that the money is allotted also, do they not? When it's transferred to the non-expenditure account?

A That's my understanding.

Q The 15-day non-compensable period includes some time that goes beyond that.

THE COURT: He didn't answer your question, or was that just a statement for my behalf.

MS. BROWN: No, no, I'm asking.

MR. FRALEY: What was the question again?



VALE-CROSS

BY MS. BROWN (Resuming):

Q The 15-day non-compensable period includes a process which goes on beyond the transfer to the non-expenditure account, is that correct, or which may go on?

A That's my understanding.

Q Thank you. Mr. Vale, on the magic date, 1972, this process changed, did it not?

A That's correct.

Q As far as allotments went. Okay. Post-1972, Mr. Vale, how much time does it take you to get the money from the trust account into disbursement status?

A The only change in the post-1972 was that it was no longer necessary for the Standard Form 1151 to go to Treasury to move it from a non-expenditure account to an expenditure account. That was the only change in the process.

Q Okay, that was the change in the process. But what did it mean in terms of time? How fast can you get the money to the Indians now?

A You mean today?

Q Today.

A We can get it the same day, today.

## VALE-CROSS

Q How about 1973? How fast could you get it to the Indians?

A Well, at that time the request for allotment had to come into the Washington office.

Q Okay. How long in 1973?

A Our estimate was 15 days.

Q All right. How long in 1974?

A I think it was in 1974 when authority was delegated to the area offices to issue allotments.

Q Was this the result of some change of law?

A Not that I'm aware of.

Q Some astounding technological breakthrough?

A No.

Q No. Just changed the accounting procedure on that one?

A That's correct.

Q Mr. Vale, I think you said that you supported the 1972 changes, and can we take your support of those changes to mean that in your opinion as a money manager, the pre-1972 system was not really a very good one?

A It was less than desirable.

Q Let's go on to our next non-compensable period, and that is the 60-day period for crediting Treasury interest and making funds

## VALE-CROSS

available on the 4% interest that's credited to the Treasury.

How long does that function now take, since it's been transferred to BIA, post-1972?

A About the same time that it did with Treasury.

Q It still takes the same amount of time. Now, is that what's reflected in the fund histories and the edits for those post-1973 and 1974 interest creditings?

A I don't know.

Q Mr. Vale, there's also another non-compensable period of 7 to 15 days with respect to making investments, once you've decided that you're actually going to invest in something and making that investment. Is that correct?

A That's correct.

Q Now, the 15 days apply to the earlier period but this time, it's not 1972 but 1971. Seven days applies to the period after 1971.

A That's correct.

Q The difference, as I understand it, is the use of wire transfers.

A Right.

Q Well, Treasury says that it's been using wire transfers

## VALE-CROSS

since the early 1960's.

A I discovered that since I've been here.

Q And you say that even the BIA was using wire transfers prior to 1968.

A That's what I read in the file.

Q Then how can we have a change in 1971 based on the use of wire transfers?

A It wasn't a change, it was when the investment office was transferred to Albuquerque in 1968; it was the understanding that wire transfer authority was not available to them, and that they had to use the regional disbursing office in Denver.

Q I see, that was your understanding and Mr. Hourigan's understanding?

A That is correct.

Q And was that understanding based on some reasonable material, such as a letter or memorandum, to that effect from higher authority?

A We didn't have the capability to use the wire transfer service.

Q Did you request, or do you know whether it was requested, since wire transfers had been used.

## VALE-CROSS

A Yes, we did request that that authority be given to wire transfer.

Q Okay, so you requested it, and then finally in 1971 you actually got it.

A Yes; in fact, in my recollection, the regional disbursing office requested that we not wire transfer, that we continue to use their service.

Q I see. Mr. Vale, in that time when you first started up the wire transfer, let's say 1971, what kind of volume were you using? Was there a technological capability to keep up with the volume of the BIA Investment Branch?

A The volume was not that large.

Q A small volume, would you say?

A Certainly a lot smaller than it is today.

Q Okay. Mr. Vale, if you've got information in advance about an incoming receipt; say, a large judgment, how long does it now take you to get the money invested?

A Is this from the date the money is available in Treasury, or are you talking about when it's available in Treasury?

Q Once the judgment has been awarded and the money is available in Treasury, that's correct.

## VALE-CROSS

A One day.

Q Mr. Vale, I believe that you spoke about a special Treasury security that you're now able to get to use for kind of short-term investments of Indian money rather than allowing them to stay idle for a day or two.

A Are you referring to the market specials?

Q The market specials. And when did those become available for Indian funds?

A 1975 I believe.

Q To your knowledge, were other trust funds able to purchase special Treasury issues prior to 1974?

A I don't know.

Q Mr. Vale, we talked about judgment funds. Do you have some advance notice on judgment funds these days? Do you have an idea when a judgment fund is coming in?

A Yes, we have an idea when it's coming in.

Q How?

A The Washington office provides us with the certificate. I'm not sure of the form, it used to be the Court of Claims issued it and now it's --

Q The GAO.

## VALE-CROSS

A Whoever.

Q So you have some advance notice of that. How about field receipts, Mr. Vale? Is it possible to learn in advance when, let's say, a large timber receipt is going to come in from Yakima or Warm Springs?

A It would be possible, yes.

Q Well, is it not only possible; is it done?

A You mean in advance?

Q Well, not in advance -- when the agency gets the money as opposed to when it's actually deposited. Do you have a policy with respect to receipts of over \$100,000 from the field?

A Yes, the area office notifies us. But we can't do anything with it until the money is deposited.

Q Right. Let's explain how that occurs. What do you mean by the area office notifies you?

A Well, we have a policy that any large deposits -- the \$100,000 is on IIM activity. On the tribal, there's really no limit on that as to what -- the area office notifies us that the money is being deposited and gives us instructions at that time as to how to invest the money.

Q I see. What's the purpose of that?

VALE-CROSS

A So we can get the money invested on a timely basis.

Q How does each area office notify you?

A By telephone.

THE COURT: I noticed some time ago the Court of Claims issued a judgment for \$17 million for the Sioux.

THE WITNESS: Yes.

THE COURT: You would be alerted to that?

THE WITNESS: Yes, sir.

THE COURT: And what would you do?

THE WITNESS: Not anything until the money is available.

THE COURT: Because I know that the Supreme Court took cert on that and it will be a year, I guess, before they get a decision down on whether or not there will be a payment.

BY MS. BROWN (Resuming):

Q Well, what do you do when the Portland area office calls and says Mr. Vale, we have \$200,000 in timber receipts that we're going to deposit today. Just say thank you? Or is there some -- what do you do?

A Well, we thank them for calling, and the next day we would buy market specials.

Q All right, Mr. Vale, let's discuss Type I and Type II



## VALE-CROSS

adjustments for a moment. Given your understanding of the Type I adjustment, the insufficient rate adjustment, if we can call it that, and I believe your testimony was that you recommended or suggested to the Department of Justice that they should eliminate that deduction, or that adjustment rather, include it with their deductions for plaintiffs' damage claim.

A That is correct.

Q Now, is the basis on which you made that suggestion the understanding which you just gave of that adjustment?

A I'm not following your question.

Q Let me read from your deposition so I can see where I understand your understanding. "Type I -- it is my understanding that a review of the investments was made on a specific date, and the range of bids that the investments were made at, and if any of the investments was more than 90% variance in the top rate that was given, and there was a range of 5 days either way, that an adjustment was made." Now, is that your understanding of Type I adjustments?

A That should have been 10%, more than 10% variance.

Q Okay, could we change it to read, "and if any of the investments was more than 10% variance in the top rate that was given, and there was a range of 5 days either way, that an adjustment was made." Is that correct?

## VALE-CROSS

A That was my understanding, yes.

Q It was based on that understanding that you recommended that Type I adjustments be excluded.

A That is correct.

Q Mr. Vale, talking about the windfall which results to tribes as a result of the overlapping investments during this period, was it a windfall for the Treasury to have the tribes' money for 5 days while it covered it into the Treasury? Is that a windfall?

A I suppose it could be considered that.

Q Suppose a tribe, instead of going through the investment office, decided that it was going to purchase a million dollars in government securities from Merrill Lynch, so on January 1 the tribe purchases a million dollars' worth of Treasury bills which will mature on January 30. Now, will the tribe get interest from January 1 to January 30?

A I would think they would.

Q This is a shrewd tribe. On January 25 they call up Merrill Lynch and say purchase another million dollars' worth of Treasury bills. When does the tribe have to settle on those Treasury bills?

A I'm not familiar with that operation.

## VALE-CROSS

Q How about investing in IBM stock, Mr. Vale? Is there a five-day trade date on that?

A Most usually there is. Of course, there's not an interest rate on an IBM stock so that wouldn't be a factor.

Q But you don't know whether you have to pay for those Treasury bills when you buy them from Merrill Lynch on the same day.

A Most usually they have a delivery date, and you earn interest from that delivery date.

Q You earn interest from the delivery date. Is it possible that there would be an overlap in those investments and the tribe would get double interest for the last five days, if it were buying through Merrill Lynch?

A I don't think so.

Q You don't think so, all right. Moving on to other defenses Mr. Vale, if I understand it correctly, the period prior to June 20, 1966; in other words, in terms of this litigation, the period from October the 8th through June 19, 1966, is what we might classify as a period of total non-compensability in that the government maintains that it cannot be charged for its failure to invest Indian funds because there was no centralized investment program set up. Is that correct? Is that your understanding?

## VALE-CROSS

A That's my understanding, yes.

Q Mr. Vale, are you responsible for that June 20, 1966 date?

In other words, is that a date that you suggested to the government?

A No, it is not.

Q Mr. Vale, do you know whether the United States was making any investments of Indian monies prior to -- of course, this is outside the Treasury -- prior to June 20, 1966?

A Yes, they were.

Q Quite a few of them?

A Not very many.

Q In 1966, did all the area offices come right into the central program?

A No, they did not.

Q In fact, did it take about 5 years to get Portland in the program?

A That is correct.

Q So Portland didn't come into the central program for 5 years, is that correct?

A I'm not sure exactly when they came into the program.

Q But it wasn't in 1966.

A They were in the program when I went to Albuquerque. Not

## VALE-CROSS

100% but to some extent.

Q And during that period 1966 to four or five years later when Portland came into the program, were all those tribes in Portland, the Portland area office tribes, were there any investments being made for them?

A I'm not aware. I was in Phoenix during that time. I'm not aware of what was happening for Portland.

Q You think there's a possibility that all the Portland plaintiffs in this case had no investments made from 1966 to 1971?

A I don't know. Without checking the records as to which investments were made on a centralized basis.

Q I don't mean centralized. Did the Portland area office have authority to make investments for Indian tribes? Do you know?

A Yes, they did.

Q Did they make investments?

A Yes, they did.

Q Did they make investments up to 1971 when they came under the centralized program?

A Did the area office make investments?

Q That's right, or were the Portland tribes just left out of the investment program for five years?

## VALE-CROSS

A I don't know what portion of the investments was made at the area office and what portion was made through the centralized investment program.

Q And were there other area offices other than Portland that were kind of coming into the program one at a time, do you know, or is Portland the only holdout?

A I'm not exactly sure as to the exact chain of events as to when the area offices came into the centralized investment program.

Q What led to the centralized investment program, Mr. Vale, did you get some sort of special authority to centralize the program?

A Well, we had to get authority from the solicitor's office as to whether to go ahead with the centralized investment program.

Q How long did it take to get the authority?

A It's my understanding it took about 18 months.

Q Was that a reasonable period of time?

A I'm not a lawyer, I don't know how long legal things take. After this session here --

THE COURT: Years, it takes years.

(Laughter.)

THE WITNESS: After this session, I think maybe I might

VALE-CROSS

change my opinion that I gave in my deposition.

BY MS. BROWN (Resuming):

Q In your deposition I think you said you thought it was excessive, didn't you?

A That is correct.

Q Mr. Vale, let's talk about the short-term investments for a few moments, the Type II adjustment, and that's also an adjustment with which you have some disagreement.

A That's correct.

Q Total disagreement.

A Right.

Q And I think you've stated that's because the tribes may have felt that they needed the money in a shorter time, is that correct?

A That is correct.

Q If the area office told you to invest on a short-term basis -- in other words, if you got a call from Phoenix and they said take the \$2 million in Uintah funds and invest them on a 30-day basis. Did you have any basis for questioning the Phoenix area office? In other words, did you have the information available in 1971 or 1972 to say to them, no, let's invest it for 90 days?

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## VALE-CROSS

A No, I did not.

Q Was that your function, to question them, or was it to invest the money under the guidelines that they gave you?

A It was not my function to question them. If they were to ask me what terms were available, we provided information on a weekly basis to the area offices giving the rates of return that we had actually received.

Q To your knowledge, Mr. Vale, was it someone's function in the BIA to question that request if it seemed unreasonable?

A It's my understanding it was each area director's responsibility.

Q So it was someone's responsibility in the government to see that those requests were reasonable. Is that correct?

A That's my understanding.

Q Mr. Vale, as an investor of funds, there's a matter that perhaps you can clear up for us. If you can negotiate an investment at the same rate on either a 360-day basis or a 365-day basis, which would you choose?

A I'd take the 360-day every time.

Q Every time?

A Every time.



## VALE-CROSS

Q Why?

A That gives you a higher yield.

Q Every time it gives you a higher yield?

A Every time.

Q It doesn't appear that way in this case. Are you familiar with Defendant's Exhibit C-8A?

A No, I am not.

Q Perhaps counsel will provide you a copy.

THE COURT: I guess you didn't talk to Mr. Fraley before that question was asked. You look like a man who's just had his pocket picked, Mr. Fraley.

MR. FRALEY: No, Your Honor, I haven't talked to him about a lot of these questions that plaintiffs' counsel is now asking, but I think I shall as soon as it comes my turn again. Since we've opened it up rather wide.

BY MS. BROWN (Resuming):

Q Mr. Vale, if we turn to page 32 of Defendant's Exhibit C-8A and we look at the first three items, we see that we have a computer calculated yield based on the 360-day basis and a 365-day basis, and it doesn't look like the computer would take a 360-day investment every time. As a matter of fact, sometimes 360 days

## VALE-CROSS

turns out higher, sometimes it turns out lower and sometimes it's just the same, isn't it?

A That's what this report shows.

Q But as an investor, can you explain that?

A I can't.

Q Okay, thank you.

Mr. Vale, in the ordinary course of investing Indian funds, do you have occasion to prepare summaries or schedules of rates to determine how well either some portion or all of the Indian funds under your jurisdiction are doing?

A Yes.

Q Were you consulted with respect to Defendant's summaries of rates in this case; that is, Defendant's Exhibit CS-3?

A I was not.

Q Let's go back to Exhibit C-8A, page 1, you'll see that there's an investment for the Ute Mountain tribe that was made on 6/2/65; it's investment vehicle 25026, I believe. And if you look at the investment as reflected on that schedule, it has a stated yield; that is, something apparently that was shown on the original instrument, as 5.625%, and a computer calculated yield of 2.598%. Mr. Vale, would you have withdrawn principal funds from the Treasury;

## VALE-CROSS

that is, 4% funds in 1965, to earn 2.6% in an outside investment?

A On Treasury notes or any coupon securities, as far as that's concerned, there are two items that are considered for earnings. Number one, the coupon rate itself, in this case this shows 5 5/8% which is the coupon rate.

Q You think that would be the coupon rate.

A That's what this shows, that's my understanding. In addition to that, you would have either additional earnings if it were purchased at a discount, or you would have a reduction in earnings if it were at premium. So there are two items involved in any coupon, unless you buy it at par. If you buy it at par your only earnings would be your coupon rate. So I don't know about this particular item, but there could be a discount or premium involved in the earnings.

Q With that understanding, Mr. Vale, is it credible to you that 4% principal funds were withdrawn from the Treasury in order to get a 2% return?

MR. FRALEY: I object to this, Your Honor, because counsel has asked the witness to take the figures as she sees them. This is not what actually happened to this investment at all, but the witness does not know about this exhibit and he can't testify

VALE-CROSS

about it.

THE COURT: Mr. Fraley, she's asking him would it be reasonable to take money out of the Treasury getting 4% to invest it in something paying 2%. That's the question she's asking him, isn't it?

MR. FRALEY: Okay, I'll withdraw my objection if that's the question.

MS. BROWN: That's right. I'm asking him, in essence, whether he finds those facts credible, based on his experience.

MR. FRALEY: If that's the question I have no objection.

THE COURT: That's the question I thought she asked.

THE WITNESS: In answering your question, it would not be a good practice to follow.

BY MS. BROWN (Resuming):

Q All right, Mr. Vale, let's look at the data that we have on that investment, if you will, please, and that's found in Defendant's Exhibits C-2B, that's the Edits, and it's vehicle number 25026 ,Ute Mountain.

On that investment there are some remarks in the lower righthand corner which say, "The date acquired is from the general ledger allotment date; the total earnings are based on available

## VALE-CROSS

deposit slips; they're not known and are based on available deposit slips." Now, in your opinion, is it possible to compute a reliable yield with the date of acquisition; therefore, the term, when the actual earnings are not known on an investment?

A That's probably how you get that 2.6%.

MR. FRALEY: The witness' answer, Your Honor, clearly shows that the question is objectionable. Well, it does.

THE COURT: Overruled.

MR. FRALEY: May I finish my statement, Your Honor, for the record. Ms. Fang discussed this one thoroughly and explained that particular one because I've got it marked on my CA exhibit. This witness couldn't know that. It's an unfair, improper question.

THE COURT: Overruled.

MR. FRALEY: All right.

THE COURT: Continue, Ms. Brown. Will you restate your question if you haven't received an answer.

BY MS. BROWN(Resuming):

Q Do you consider it possible to compute a reliable yield with the date of acquisition; therefore, the term, if an investment is not certain and the actual earnings are not known?

A Well, in order to -- let me put it this way, in order to

## VALE-CROSS

compute the yield on an investment, you have to know 3 of the 4 items before you can compute the yield.

Q Do you know 3 of the 4 items here?

A I don't know the whole story on this document, and if I recall, this is one that was purchased back in 1958 and it was kept--

Q The date acquired here is shown as 1965.

A Well, I think it was one that they kept exchanging, if I recall. But without knowing the whole story on it, I couldn't give you my opinion on whether or not all the information is here or not.

Q Mr. Vale, I understand that without knowing the whole story you can't give us your opinion of whether or not all the information is here. But if this is all the information you have, can you give us your opinion on whether you can compute a reliable yield.

A On the information that is here, I can compute a yield based on what information is here. It was purchased 6/2/65 and it matured on 2/15/68, which gives you the time period. The earnings was \$6,328.17, and the income was \$90,000, so there are three of the four items that are available.

Q Mr. Vale, is the income earned available when the remarks on that investment say that earnings are not known?

## VALE-CROSS

A I'm just going by what I read here, that the income earned was \$6,320.

Q And you wouldn't take those remarks into consideration if you were asked to compute the yield on this investment?

MR. FRALEY: Object, Your Honor, she told him --

THE COURT: Rephrase your question, Ms. Brown.

BY MS. BROWN (Resuming):

Q Would you take the remarks into consideration if you were asked to compute the yield on this investment?

MR. FRALEY: Objection, Your Honor, she told him to accept the --

THE COURT: Overruled.

MR. FRALEY: The numbers as he saw them.

MS. BROWN: No, I didn't.

THE COURT: Overruled. Can you answer the question?

THE WITNESS: Taking into consideration everything that's on this sheet, I could not accept that figure as correct.

BY MS. BROWN (Resuming):

Q All right, Mr. Vale.

A There is one item here that shows -- it says, "based on available deposit slips, Standard Form 291 -- and this was assumed

## VALE-CROSS

that all the deposits were traced for this particular investment, which would indicate that all the earnings are there.

Q Does available mean all, to you, Mr. Vale, or does it mean those are the ones they happened to find on this particular investment?

A The figure that they came up with was based on available deposit slips.

Q You think the implication of that is that those were all the slips?

A It says that's all.

Q All, or all they could find?

A It says it was based on the available deposit slips.

Q So you think that perhaps 2% is a credible figure for that investment in 1965?

A Was that possibly an early withdrawal? Where did we see the other documentation on this?

Q That's in C-8A.

A Well, from that low yield, I would say that not all the earnings is shown.

Q Tell me something, Mr. Vale, since Indian funds were in the Treasury earning 4% or perhaps 5%, principal funds, was there any BIA guideline with respect to withdrawing them, principal funds, to



## VALE-CROSS

earn less than 4% or 5%, whichever was applicable? Were you allowed to do that?

A Well, if you -- it would depend on whether or not you had to have funds or not.

Q In other words, Mr. Vale, there was no restriction for you as an investment officer from withdrawing principal funds which were earning 4% in the Treasury and investing them outside the Treasury at 3% or 2%?

A No, you couldn't invest them but on an early withdrawal, whatever the market was when you sold them, that's what you would get and it would be possible that the return would be less than 4%.

Q Mr. VAle, every year your office publishes an annual report, does it not?

A That's correct.

Q And I've looked at them from 1972 or so, and you cite as a statutory reference for investing Indian funds the 1938 Act, is that correct?

A That is correct.

Q Now, Mr. Vale, unless I'm missing something, I don't see any more recent authorities, is that correct? Is the 1938 Act the only statutory reference you cite?

## VALE-CROSS

A That's the one we go by.

Q So for your investment of all the money that we see in this case and all the money that --

A You're referring to 25 USC 162A?

Q That's right.

A Okay.

Q Your authority for all these investments in the edits for these years is the 1938 Act, is that correct?

A That is correct.

MS. BROWN: Thank you very much, no further questions.

THE COURT: Mr. Fraley?

## REDIRECT EXAMINATION

BY MR. FRALEY:

Q Mr. Vale, you and counsel for the plaintiffs were discussing some of the improvements that have occurred up to 1969. Going back to about 1974, were there any -- and to the investment policy that was rewritten, do you consider that an improvement?

MS. BROWN: Excuse me, Mr. Fraley, could you repeat that question? I only heard about half of it.

BY MR. FRALEY (Resuming):

Q Yes. Do you consider this revision of the policy where

## VALE-REDIRECT

money is arbitrarily invested by BIA if the tribe does not respond within the time that you think they should, this you classify as an improvement.

A Yes, that is correct.

Q Did this current litigation here that we're in now in any way influence that change in policy?

A It could have had a bearing on it.

Q Were there any improvements adopted by your organization in 1975?

A What I have listed here is that daily cash flow was generated by the Bureau computer for IIM and IMPL funds, which is not relative to this hearing.

Q IMPL funds are not PLL funds.

A That is correct.

Q What about 1976? Or, while we're on 1975, I believe you stated you were offered an item to invest in by Treasury that you hadn't had before.

A Market specials, that came into effect in 1975, that's correct.

Q What about any transfer of equipment for tribal funds? Not in 1975 -- let's take 1977.

## VALE-REDIRECT

A At that time, we initiated a procedure whereby deposit, tribal deposits, could be transferred by an electronics funds transfer rather than a check being issued by a contractor or what have you.

Q What did this serve to do? Shorten the time lag?

A Shorten the time from the time the check was issued until it was deposited.

Q All right. In 1978, did you establish another improvement? Let's call them improvements.

A Well, in 1978 we initiated action to get approval to pool tribal trust funds.

Q Had you had that authority before?

A Not that I'm aware of.

Q And what did you do after you got your authorization by the Associate Solicitor, Mr. Fredericks?

A We proceeded to acquire a system that would enable us to pool tribal funds; primarily the main need for a system would be a system that would allow us to compute interest on a daily basis, and several other activities.

Q Did this create a benefit for the Indians in some fashion?

A Well, we felt that that could create benefit for the Indians.

## VALE-REDIRECT

Q In what way? Was that a time-shortening device? How does it help them?

A Primarily, it would make the funds available more readily to the tribes.

Q Did you do anything else about the -- after you got the authority for pooling, did you tell anybody about it?

A One of the conditions of our approval from the Washington office in approving the pooling concept was that we get -- that it would be optional for the tribes as to whether or not they wanted to pool or did not want to pool. And we issued a memorandum stating this to the tribes, that if they wished to participate in the pool it was not necessary to do anything; if they didn't wish to participate in the pool, they could send in resolutions to that effect.

Q In other words, if you didn't hear from them, you arbitrarily put them in the pool, is that the intent of the information?

A That was the intent.

MS. BROWN: Your Honor, We're getting pretty far afield from cross examination.

THE COURT: Yes, we are.

MR. FRALEY: Your Honor, she opened up this whole period up to date, and this is something that's involved. She discussed

## VALE-REDIRECT

pooling. I want to find out what the response was, if any, to this solicitation or advice to the Indians that now we can put your money in a pool.

MS. BROWN: I don't see how -- if this pool is just starting, I don't see how this can be relevant to the litigation period.

THE COURT: You're in the 1978 period now.

MR. FRALEY: Your Honor, so were all the things that she was comparing between the results of performance in 1972 with the results of performance in 1979. She has opened this area up completely.

THE COURT: Run through it, then.

MR. FRALEY: I don't have too many question.

BY MR. FRALEY (Resuming):

Q Proceed.

A There was -- we received responses from 35 tribes saying they did not wish to participate in the pool.

Q Have you pooled any of the ones whom you've not heard from yet?

A Have we --

Q Have you made investments of a pool nature?

A No, we have not.

## VALE-REDIRECT

Q Of those responses denying the desire to have the money pooled and invested in a pool, are they contained in Defendant's Exhibit No. AP-109, which is in evidence?

A Yes.

Q Mr. Vale, you mentioned and discussed with counsel for the plaintiffs when this self-determination policy was developed. I think you said you thought it started in 1970. To your knowledge, was that an executive policy position announced by President Nixon, or was that a statute by the Congress?

A That was the executive policy, to my understanding, issued by President Nixon.

Q And President Nixon was the head of the Bureau of Indian Affairs, was he not?

A Yes, sir.

Q What I'm saying is the Department of the Interior is an executive branch of the government, is it not?

A That's correct.

Q You and counsel also discussed Mr. Mayo's letter of 1969, Mr. Mayo being the Director of the Bureau of the Budget. Did you ever try to get a reversal of that letter or a clarification of that policy to allow you to invest in government agency issues?

## VALE-REDIRECT

A Yes, we currently have a letter to the OMB requesting that that restriction be removed.

Q Did you make a request for clarification through anyone else recently?

A An official request?

Q Well, did you prompt an official or an unofficial request for clarification? I'll make it easy for you. Did you ask present defense counsel to inquire and ask for clarification?

A Yes, I did.

Q And to your knowledge, did defense counsel get an answer from OMB?

A Yes, there was a letter from OMB addressed to the Department of Justice giving their position on their letter.

Q I show what's marked as Defendant's Exhibit JWV-2 and ask you if that's the letter.

A Yes, that's the letter.

MS. BROWN: Is Mr. Fraley offering JWV-2?

MR. FRALEY: Yes, Your Honor, I'll have to reproduce it later.

MS. BROWN: I'd like to object.

THE COURT: On what grounds?



## VALE-REDIRECT

MS. BROWN: On the grounds that it's not really relevant. It's one more statement that OMB stands where it stands and it's cumulative, at least. If The Court would like to see it I guess it's all right but it's one more unnecessary piece of paper.

THE COURT: I know. I'm going to allow it in but I agree with you, Ms. Brown. I don't feel it contributes much. So it will be received in evidence over objection as Defendant's Exhibit JWV-2.

(The document referred to, heretofore marked for identification as Defendant's Exhibit No. JWV-2, was received in evidence.)

I'd like to caution counsel when they're preparing their findings and they cite these exhibits, they'd better cite them right. I don't have the benefit of taking Exhibits 1, 2, 3, 4 or A, B, C. The way these exhibits are in evidence in this case is going to be troublesome when you're preparing your findings.

BY MR. FRALEY (Resuming):

Q Any time during 1969 to 1974, Mr. Vale, did you ask any lawyer in the Department of Interior for a legal opinion or advice with regard to this concept of investing in agency issues? Have you sought any legal advice on that?

## VALE-REDIRECT

A Not to my knowledge.

MS. BROWN: Your Honor, I don't know what the line of questioning is directed toward. Mr. Vale has said he wasn't happy with the policy and that he tried to change it, and for plaintiffs I'll accept Mr. Vale's statement on that point.

THE COURT: I don't know where he's going, either, Ms. Brown. I'm giving him plenty of leeway so he can't complain he's been shut off.

MS. BROWN: Very well, Your Honor.

MR. FRALEY: That complaint won't be made, Your Honor. Who knows what my successors may say.

THE COURT: Heaven forbid, Mr. Fraley.

(Laughter.)

MR. FRALEY: That's happened, Your Honor, lawyers leaving in the middle of findings and things like that.

THE COURT: Oh, I didn't know that. Is that a college approach to findings or what?

MR. FRALEY: Maybe it's a defeatist's approach I suppose, or maybe somebody retired or something.

THE COURT: Are you giving us advance warning?

MR. FRALEY: Oh, no.

## VALE-REDIRECT

BY MR. FRALEY (Resuming):

Q Now, Mr. Vale, talking about this -- you and counsel were talking about this 15-day allotment grace period. Do you recall that?

A Yes, I do.

Q Is it your understanding that that grace period was not to overlap with any other grace period that was being planned?

A That's my understanding.

Q So it shouldn't, if the computations are done properly, overlap with the 45-day appropriation warrant grace period, is that correct?

A That's my understanding.

Q Nor the -- well. One more modern system that maybe you overlooked -- are people able to obtain current quotes of Treasury issues and so forth that might assist them in making a decision to invest funds by phone call?

A We have two code-a-phones that are updated twice a week that gives -- one is primarily for the area offices, the agencies and the tribes which gives the rates of return that we receive for investments for that period. The other code-a-phone is available to banks, savings and loans and credit unions, which can call in to find out what rates we receive plus what's available for the next offering.

## VALE-REDIRECT

Q So anybody who's plugged into that phone system can find out what the bidding is and find out if they want to be a bidder.

A That's right.

Q Have you advertised or published the availability of such service?

A To the banks we have and to the area offices, also.

Q What does the effective date on a Standard Form 1151 mean on an allotment?

A That is the day that the interest stops accruing, the 4% interest in Treasury.

Q Is this the anticipated date of disbursement?

A That is correct.

Q You were asked, I believe, if the central office after June 20, 1966 had the capability to handle all of the tribes. Do you recall that discussion?

MS. BROWN: Objection, Your Honor, I don't believe Mr. Vale was ever asked that question.

MR. FRALEY: I think he was asked a question. Maybe I can restate it.

BY MR. FRALEY (Resuming):

Q Did they have the capability prior to June 20, 1966 to

## VALE-REDIRECT

invest the funds of all the tribes? This was in connection with defendant's claim for damages that no damages should be awarded prior to that time.

MS. BROWN: Objection. That question was not asked of Mr. Vale.

THE COURT: Overruled. I'm stretching it again.

MR. FRALEY (Resuming):

Q I believe I wrote down that in response to a further question by counsel that no Portland -- the Portland area wasn't all the way in at that time and they later came in. Maybe they didn't have all their investments in at that time, but later they brought all or most of them in. Prior to that time, did BIA have the capability to invest all trust funds of all tribes?

MS. BROWN: I'm sorry, could you please repeat that?

MR. FRALEY: It's the same question I had before, but I will say it again.

THE COURT: What he's trying to say is that while all the tribes did not participate or were not governed by the central office and the investment program, did the central office have a capability to embrace all the tribes.

MR. FRALEY: Prior to June 1966.

## VALE-REDIRECT

THE COURT: That's the question he's trying to get out, I guess.

THE WITNESS: The answer to that would be no, because there was no centralized investment program prior to that time.

BY MR. FRALEY (Resuming):

Q With respect to Portland and perhaps other tribes, were investments being made with the help of the area office with private investment houses, such as Merrill Lynch, Layman Brothers and so forth?

A They would be funds outside of trust, not trust money.

Q Well, let me ask you if Navaho trust monies were used in such an investment.

MS. BROWN: Objection, Your Honor. If they're not trust funds, they're not subject to this litigation, and the Navaho tribe, much as I wish we could have gotten them as plaintiffs here, already has counsel who will adequately defend their claims when the time comes.

THE COURT: Sustained.

BY MR. FRALEY (Resuming):

Q All right. How about the Hoopas? Was there a miners' trust fund set up in the Bay area for the Hoopa tribes?

## VALE-REDIRECT

A Yes, there was.

Q And that was through private investment company, was it not?

A That is correct.

MS. BROWN: Your Honor, then I would object again. It's not an account subject to the litigation and it's certainly not been taken up on cross examination.

MR. FRALEY: I don't know whether it is or not, but I do know that --

THE COURT: Well, overruled. It's in there and it's just more ink on the page.

This is supposed to be Redirect.

MR. FRALEY: It is, Your Honor.

THE COURT: Well, I think it's got a lot of Direct in it.

MR. FRALEY: Just one last question. That should help the situation.

BY MR. FRALEY (Resuming):

Q You responded to plaintiffs' question that with today's modernization, the facilities and the equipment and the authorizations that you have, that you could make investments on one day's notice. Is that correct?

A That's correct.

## VALE-REDIRECT

Q And that there was no statutory reason why this couldn't have been done through the period 1964-1974. Is that right?

A Well, of course today the modern facilities that are available are far advanced as to what they were, say, in 1964.

Q Isn't it fair to say that to make a comparison between the litigation period and today involves the employment of a lot of hindsight?

A That is correct.

MR. FRALEY: That's all I have, Your Honor.

THE COURT: Ms. Brown?

MS. BROWN: I'll ask just one question, and it will be just one question.

## RE CROSS EXAMINATION

BY MS. BROWN:

Q Mr. Vale, how many Indian tribes do you invest for today?

A Currently, 225.

MS. BROWN: Thank you.

THE COURT: May the witness be excused?

MR. FRALEY: Yes, Your Honor.

THE COURT: Thank you very much, Mr. Vale.

MR. FRALEY: May we have a break here, Your Honor, to make